

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 165 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONTROLLER

Versus

A H MANSOORI

Appearance:

MR KM PARIKH for Petitioner

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 20/04/2000

ORAL JUDGEMENT

Heard the learned advocates for the parties.

In this petition, the petitioner has challenged
the award dated 10.2.1999 passed by the labour court in

Reference No. 1207 of 1993 whereby the petitioner has beendirected to reinstate the respondent in service with continuity of service and 50% of the back wages for the intervening period.

Learned advocate Mr. Parikh has submitted that the respondent was working as a driver and he was found to be unfit for the post of driver as per the opinion given by the Civil Surgeon and, therefore, his services were terminated. Before the labour court, it was the contention of the petitioner that it is not possible to reinstate the respondent on the lower post as there is no service regulation or rule which would entitle the respondent to be reinstated on the post of helper. Before the labour court, the corporation has produced documentary evidence vide Exh.10 where there is a certificate of civil surgeon declaring respondent unfit for the post. Copy of settlement and other relevant documents were produced by the petitioner before the labour court.

According to Mr.Parikh, learned advocate for the petitioner, there are two settlements arrived at by the corporation with the recognised union, one of which is dated 26.2.1971 and the another is dated 21.12.1989. He has submitted that there is circular. As per the said circular, in such a situation when the workman has been declared to be unfit and required to be terminated.

During the course of hearing, learned advocate Mr. Parikh has produced on record copies of the aforesaid settlements and has also produced certificate issued by the Superintendent of Jamnabai Hospital, Baroda and the order of termination dated 3rd August, 1993 passed by the Divisional Controller, ST Baroda.

I have considered both the settlements produced on record. The settlement dated 26.2.1971 is relating to visual accuracy test. If any employee is found to be unfit, then, as per the said settlement, he is required to be absorbed on the alternative post and in respect of another settlement dated 21.12.1989, item no. 37 sub clause (7) provide that if during the course of employment, due to injury received and if an employee becomes unfit, then, he should be absorbed on any alternative post. As per the medical certificate produced on record, it appears that the respondent has been rendered unfit for the post of driver and is fit for the post of helper and that he has been advised light duty. However, light duty was not given to the respondent workman and on the basis of the said

certificate, ultimately, his services were terminated by the petitioner under order dated 3.8.1993. The respondent has completed more than 13 years of service on the date of the impugned order of termination. Learned advocate Mr. Parikh has pointed out that there is no provision in the corporation which would provide for recategorisation of such employee in alternative post and, therefore, the impugned award is bad in law and is contrary to the service regulations and, therefore, is required to be quashed and set aside.

I have perused the impugned award passed by the labour court. I have also considered the submissions made by the learned advocates for the parties. In para 6 of the impugned award, the labour court has come to the conclusion that if the workman is found to be unfit after completion of 13 years' service and he is found to be fit for any light work, then, it is the duty of the corporation to provide such light work to the workman on any alternative post. On the basis of such conclusion, the labour court has quashed and set aside the impugned order of termination and has further directed to reinstate the respondent as stated above.

The labour court was of the view that the corporation was not justified in terminating the services of the workman and, therefore, while exercising the powers under sec.11A of the ID Act, the labour court has quashed and set aside the impugned order of termination and has directed the corporation to reinstate the respondent as helper with retrospective effect and has granted fifty per cent of the back wages for the intervening period.

After perusal of the impugned award and also keeping in view the position of law settled by the apex court in various decisions, I am of the view that the labour court has committed no error in passing the impugned award. The learned advocate appearing for the petitioner has not been able to point out any jurisdictional error and/or infirmity in the award impugned herein. As per the principles laid down in the decisions reported in 1998(1) GLR page 17 and 1998 AIR SCW 1840, this court cannot reappreciate the evidence which was appreciated by the labour court and this court cannot act as a court of appeal. I am, therefore, of the opinion that the impugned award passed by the labour court does not call for any interference of this court in exercise of the powers under Article 226/227 of the Constitution of India. This petition is, therefore, required to be dismissed.

Accordingly, this petition is dismissed. Rule is discharged. There shall be no order as to costs.

In view of the above, in the interest of justice, the petitioner is directed to reinstate the respondent as per the impugned award passed by the labour court within four weeks from the date of receipt of writ of this court and to pay fifty per cent of the back wages for the intervening period within six weeks from the date of receipt of certified copy of this order and to pay full wages from the date of the impugned award till the date of his actual reinstatement within six weeks from the date of receipt of writ of this order.

20.4.2000. (H.K.Rathod,J.)

Vyas